

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
CENTRAL DIVISION

P&M SERVICES, INC., a Tennessee)	
corporation,)	Case No. 04-40173-FDS
Plaintiff,)	
v)	
)	(Docket No. 5270-0001)
ANDRE LAVALLEE,)	
Defendant.)	

**ANSWER TO MOTION TO DISMISS
PURSUANT TO FED. R. CIV. P. 12(b)(6)**

Defendant Andre Lavallee (“Lavallee”) has filed a Motion to Dismiss under Fed. R. Civ. P. 12(b)(6). However, that same rule requires the Motion to be treated as a Motion for Summary Judgment under Fed. R. Civ. P. 56, because Lavallee has presented matters outside the pleadings.

Treated as a summary judgment motion, Lavallee’s Motion must be denied. First, it is premature. Pursuant to Rule 56(f), the Court should deny the Motion or continue the Motion until Plaintiff P&M Services, Inc. (“P&M”) has a reasonable opportunity to take discovery. Second, Lavallee has mischaracterized the appropriate legal test. He is not “immune” from liability for patent infringement or inducement of patent infringement. Third, there are genuine issues of material fact that preclude summary judgment under Fed. R. Civ. P. 56.

As set forth more fully in the Brief in Opposition, the Court should deny Lavallee's Motion to Dismiss, and award Plaintiff the costs and attorney's fees it has incurred in responding to this matter.

/s/ Arthur F. Dionne

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